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CA Intermediate 2024 Suggested Answers · Paper 2 Corporate and Other Laws

EXAM	YEAR	TYPE
CA Intermediate	2024	Suggested Answers

SUBJECT	DATE
Paper 2 Corporate and Other Laws	May 2024

PAPER – 2: CORPORATE AND OTHER LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) MNO limited has the following equity share capital –

Class-1: Equity Share Capital – 3,00,000 equity shares of ₹ 10 each. *(1 voting right for every 1 share)*	*₹ 30,00,000*
Class-2: Equity share Capital – 50,000 equity shares of ₹ 10 each. *(1 voting right for every 5 shares)*	*₹ 5,00,000*

At the time of issue, the company had fulfilled all the conditions related to the issue of equity share capital.

The company wants to vary the voting rights of class 2 equity share capital– 1 voting right for every 5 shares to 1 voting right for every 10 shares.

The Company's Memorandum and Articles of Association have given the company the power to make the variation. The holders of 40,000 equity shares have their consent in writing for this variation.

Out of dissenting shareholders, the holders of 4,500 equity shares want to apply to the Tribunal against the company's action.

Examine, with reference to the relevant provisions of the Companies Act, 2013-

(i) Whether a company can change the rights of its shareholders?

(ii) Whether the dissenting shareholders can apply to the Tribunal?

(5 Marks)

(b) BBQ Ltd., with its registered office in Hyderabad, has two branch offices, one located in Delhi and the other in London. The accounting transactions of the branches are recorded and all books of account are maintained in

the branches. The branch accountant of the Delhi branch sent monthly and the branch accountant of London sent quarterly summarized trial balance, profits and loss account and balance sheet to the Hyderabad office. One of the assistants of the audit team, Mr. Naveen, raised the issue that the branches of the company maintain its books and records at branches, so it defaults on not maintaining the proper books of account at the registered office. Mr. Naveen further objected to the fact that the London branch sent their summarised returns on a quarterly basis instead of a monthly basis. You are requested to analyse and decide the validity of both the objections of Mr. Naveen relating to the place of maintaining the books of account and sending summarised returns thereof to the registered office by the branch offices of the company referring to the provisions of the Companies Act, 2013. ***(5 Marks)***

(c) Mr. L was employed as a fashion designer in Elegant Textile Ltd., a public limited company in Gurugram, India during the financial year 2023-24. He had efficiently provided his services for 183 days during the above said period. On 01.04.2024, Mr. H. the Human Resource Manager of Jeff Fashion Ltd., Paris (a foreign country) offered him a better employment opportunity in such company.

On 02.04.2024, Mr. L. left India for taking up employment as a production controller at Jeff Fashion Ltd. in Paris. On 30.04.2024 he flew back to India for a 10 day family function in Manali, India.

In light of the provisions of the Foreign Exchange Management Act, 1999, elucidate: The residential status of Mr. L-

(i) On his return for attending the family function on 30.04.2024.

(ii) In case, instead of vacation, he joins an employment in an Indian company after arriving on 30.04.2024. ***(4 Marks)***

Answer

(a) Section 48 of the Companies Act, 2013, allows the variation of shareholders' rights, if three conditions have been met.

First - There should be a provision in the memorandum or articles of the company entitling it to vary such class rights, in absence of same; the terms of issue of the shares of that class not prohibiting such a variation.

Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting.

Proviso to sub-section 1, provides if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Third – Where the holders of not less than10 per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled and where any such application is made the variation shall not have effect unless and until it is confirmed by the Tribunal.

(i) In the given question, 40,000 equity shareholders of Class 2 have given their consent in writing for the variation.

Since, 80% (40,000/ 50,000) of the shareholders have given the consent, the company can change the rights of Class 2 shareholders provided such change in the rights of Class 2 shareholders is not affecting the rights of any other class of shareholders i.e. Class 1 shareholders in this case.

(ii) Total number of dissenting shareholders= 50,000- 40,000= 10,000.

Minimum number of shareholders who may apply to the Tribunal and then variation shall not take effect unless and until it is confirmed by the Tribunal= 10% of 50,000=5,000.

In the given question, since less than 5,000 (here 4,500) shareholders are intending to apply to Tribunal, hence, they cannot apply.

(b) 1. Provisions of section 128 of the Companies Act, 2013, requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

It also provides that all or any of the books of account may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board, the company shall within seven days thereof file with the registrar a notice in writing as per rule 2A of

the Companies (Accounts) Rules, 2014 in form AOC-5 giving full address of that other place.

Thus, in the given case, the books of accounts of BBQ Ltd. should be prepared and maintained at registered office in Hyderabad. However, the same can be maintained at the respective branches if the Board of directors have decided so and intimated the registrar a notice in writing within 7 days thereof giving full address of that other place (i.e. other than the registered office).

Hence, objection of Mr. Naveen is valid as intimation to registrar is not specified in the question.

2. Where a company has a branch office in or outside India, it shall be deemed to have complied with the requisite provisions of section 128(1) if-

   a. Proper books of account relating to the transactions effected at the branch office are kept at that office, and

   b. Proper summarised returns are sent on periodical basis by branch office to the company at its registered office or other place.

   As per Rule 4(1) of the Companies (Accounts) Rules, 2014, the summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.

   Since, London office was sending summarized returns to the registered office in Hyderabad on quarterly basis, which is as per the requirement of law, hence, the objection of Mr. Naveen is invalid.

(c) According to section 2(v) of the Foreign Exchange Management Act, 1999, "Person resident in India" means a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, for or on taking up employment besides with the other specified purposes, outside India.

(i) In the given question, Mr. L will be treated as a person resident outside from 2.4.2024 till the time he works in Jeff Fashion Ltd. in

Paris, as he has gone out of India for or on taking up employment outside India.

His return to India for 10 days to attend a family function, will not alter his residential status.

(ii) Mr. L will be treated as a person resident in India from the day he joins employment in India (after arriving on 30.4.2024).

Question 2

(a) Referring to the provisions of the Companies Act, 2013, answer the following queries:

(i) What is the type of resolution to be passed and maximum number of persons to whom an offer by private placement in a financial year be made?

(ii) Explain the consequences of non-allotment of shares within the stipulated timeline.

(iii) In case the shares were allotted within the requisite allowed time, when can the company start utilizing the funds received by it from such private placement? ***(5 Marks)***

(b) (i) In the circumstance where Mr. M and Mr. P, joint shareholders of Primal Private Limited holding 500 equity shares, have conflicting views on one special business (related to proposed changes in the Articles of Association) at the extra-ordinary general meeting, Mr. M is endorsing the resolution, and Mr. P is dissenting. Determine the procedure for casting the vote in the event of such a situation, as per the guidelines outlined in the Companies Act, 2013. ***(3 Marks)***

(ii) Okara Limited, a company. having a net worth of ₹110 crore and a turnover of ₹450 crore, wants to accept deposits from the public. Referring to the provisions of the Companies Act, 2013, decide, whether the above company can accept the deposits from the public.

(2 Marks)

(c) (i) The Board of Directors of Cool Private Limited, through a resolution passed in the board meeting, granted authorization to Mr. Sharad, the CEO of the company to appoint two employees for the procurement department. Subsequently, Mr. Sharad selected Mr. Suresh and

Mr. Hemant for the positions. However, after one month, Mr. Sharad, noticing unsatisfactory performance and lack of honesty in their duties, issued dismissal orders for both employees, citing proper reasons. Mr. Suresh contested his dismissal in the court, arguing that the Board had only empowered Mr. Sharad for appointments and not for dismissals and hence the dismissal order is invalid.

Assess the validity of Mr. Suresh's argument under the provisions of the General Clauses Act, 1897. ***(2 Marks)***

(ii) Mr. M issued a cheque of ₹3,00,00 dated 31.12.2023 at 10 a.m. to Mr. N as a consideration towards the medical services provided by the later. Mr. N presented the above cheque on 31.03.2024 during the banking business hours. The cheque was dishonoured taking the plea that it was not presented within the requisite time of 3 months as provided under section 138 of the Negotiable Instruments Act 1881.

Referring to the provisions of the General Clauses Act, 1897 decide, whether the plea for dishonouring the cheque was valid. ***(2 Marks)***

Answer

(a) (i) Rule 14 (1) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014*, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Thus, based on above, the resolution will be passed.

As per section 42(2) of the Companies Act, 2013, a private placement shall be made only to a select group of persons who have been identified by the Board, whose number shall not exceed 50 or such higher number as may be prescribed, in a financial year.

Rule 14 (2) of the *Companies (Prospectus and Allotment of Securities) Rules, 2014* has prescribed 'an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred (200) in the aggregate in a financial year'.

Provided that any offer or invitation made to Qualified Institutional Buyers and Employees of the company being offered under a scheme of ESOP under section 62(1)(b) shall not be considered while calculating the limit of two hundred persons.

As per rule 14(7), NBFCs which are registered with the RBI and Housing Finance Companies which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then need not to comply with the rule 14(2) above.

Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

(ii) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement shall allot its securities within sixty days from the date of receipt of the application money.

If company fails to make allotment within 60 days, then repayment of the application money to the subscribers shall be made within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day.

(iii) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment

shall be filed with the Registrar within 15 days from the date of the allotment under section 42.

Hence, it can utilize the money thus received once the return has been filled with the Registrar.

(b) (i) As per the Companies Act, 2013, in case of joint shareholders, they must concur in voting unless the articles provide to the contrary.

As per Regulation 52 of Table F, the voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members. The joint-holders have a right to instruct the company as to the order in which their names shall appear in the register of members.

Accordingly, in case of Mr. M and Mr. P, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is cast in favour of resolution or against it.

(ii) According to section 76 (1) of the Companies Act, 2013, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

Okara Limited is having net worth of ₹ 110 crore. Hence, it falls in the category of 'eligible company' and thus can accept the deposits from public.

(c) (i) According to section 16 of the General Clauses Act, 1897, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

In the given question, Mr. Sharad was granted authorization to appoint the said employees. This implies (in terms of the General Clauses Act, 1897) that he also had the power to dismiss or suspend these employees. Hence, Mr. Suresh's argument is not valid.

(c) (ii) As per the section 9 of the General Clauses Act, 1897, in case any legislation or Regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

The first day in series is 31.12.2023 and last day is 31.03.2024. Hence, applying the above provisions, 31.12.2023 is to be excluded and 31.03.2024 is to be included in calculation as per the General Clauses Act, 1897.

Since, the cheque has been presented within 3 months i.e. on 31.03.2024, it is eligible for honor and payment.

Hence, the plea of dishonouring the cheque is not valid.

Question 3

(a) "A Bonus share is a distribution of capitalized undivided profit having an identity and value capable of being bought and sold." in reference to the above line elaborate the pre-requisites for issue of bonus shares as enlisted in the Companies Act, 2013. ***(5 Marks)***

(b) Q L Ltd. is a public limited company incorporated in Surat, Gujarat with 1200 members. On 10.12.2023 a general meeting was convened in which 14 members were present in person. Mr. Mohan was acting as an authorized representative of two body corporates who are members of Q L Ltd. Shyam one of the important members was absent. The Chairman Mr. Rahi adjourned the meeting, taking plea of absence of Mr. Shyam, to same day and place next week. The members present at the meeting venue waiting to attend, opposed the decision submitting that the majority of them present now shall be unavailable next week. Referring to the provisions of Companies Act, 2013 elaborate:

(i) Whether the requisite quorum to hold meeting as required in case of public limited companies is present in this case?

(ii) Whether Mr. Rahi could adjourn the meeting in the current scenario?

(5 Marks)

(c) What are the differences between interpretation and construction in the legal context, and how do these two concepts relate to each other as per Interpretation of Statute? ***(4 Marks)***

Answer

(a) Pre-requisites for issue of bonus shares

As per section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless:

a. it is authorised by its Articles,

b. it has on the recommendation of the Board, been authorised in the general meeting of the company.

c. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.

d. it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.

e. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

f. it complies with such conditions as prescribed by Rule 14 of the *Companies (Share capital and debenture) Rules, 2014,* that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

(b) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

As per Secretarial Standard– 2, one person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum.

Here, the term 'members personally present' refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

(i) Q Ltd. is a public company, having 1200 members hence, the quorum shall be 15 members personally present.

Mr. Mohan shall be treated as 2 members as he is the authorized representative of two body corporates.

Hence, total 15 members were present at the meeting held on 10.12.2023.

Thus, the requisite quorum was present.

Assumption: It is assumed that these 14 persons are inclusive of Mr. Mohan.

(ii) In the given scenario, even if Mr. Shyam was absent, Mr. Rahi could not adjourn the meeting, as the requisite quorum was present.

(c) Difference and Relationship between Interpretation and Construction

The two terms- 'Interpretation' and 'Construction', are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislature from the words with which it is expressed, these two terms have different connotations.

Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.

Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.

In practice construction includes interpretation and the terms are frequently used synonymously.

Question 4

(a) Long Boots Ltd. a listed company is engaged in the manufacturing of shoes and related accessories. The Business is set on a recovery mode by the induction of the new Production Manager, Mr. A. The Board of Directors of the company has recommended the declaration of a dividend of ₹ 50 lakh after a gap of eight years during which profits were inadequate to distribute the same.

The dividend thus proposed is to be met partially out of the current year profit of ₹ 16 lakh. Accumulated profits during the past eight years were ₹ 170 lakh which is 25% of the total share capital of the company. Referring to the provisions of the Companies Act, 2013 decide, whether the conditions with regard to declaration of dividend in case of inadequate profit are met? You are requested to support your answer with requisite calculations.

(5 Marks)

(b) *A dispute among the partners of Limited Liability Partnership (the LLP) jeopardized the stability of the business. Out of two partners, one due to a quarrel, left the LLP. The other partner alone continued the business of the LLP. You are being an expert in law is requested to explain the provisions governing the LLP being operated by a single partner and its winding up by the Tribunal as per the provisions of the Limited Liability Partnership Act, 2008.* ***(5 Marks)***

(c) *Explain the term "Generalia specialibus non derogant", in connection with Interpretation of Statues.* ***(4 Marks)***

Answer

(a) According to second proviso to section 123, where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of *the Companies (Declaration and Payment of Dividend) Rules, 2014*.

Free Reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

Under Rule 3 such declaration shall be subject to the following conditions:

CONDITION I

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

CONDITION II

The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

CONDITION III

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

CONDITION IV

The balance of reserves after such withdrawal shall not fall below 15% of its paid- up share capital as appearing in the latest audited financial statement.

In the given question, since Long Boots Ltd. current year profits of ₹ 16 lakh are insufficient to meet the dividend requirement of ₹ 50 lakh, hence the company has to fulfil the conditions as prescribed under Rule 3 (mentioned above).

Particulars	**Amount (in ₹)**
Amount of dividend declared (A)	50 lakh
Current year profits (B)	16 lakh
Amount to be withdrawn accumulated profits [(A)- (B)]	34 lakh
Accumulated profits during the past 8 years	170 lakh
Total share capital of the company [170/25%]	680 lakh

Fulfilment of Conditions mentioned in Rule 3

Conditions	**Calculation**		**Met/ Not Met**
I	This condition is not applicable the company has not declared any dividend in each of the three preceding financial year.		-
II	Paid-up share capital and free reserves	680+ 170	Met
		= 850 lakh (C)	

	10% of (C)	85 lakh	
	Amount to be withdrawn accumulated profits i.e. 34 lakhs is less than (C)		
III	The company has since made profit in the financial year in which dividend is declared.		Met
IV	Free Reserves (D)	170 lakh	Met
	Amount drawn for payment of dividend (E)	34 lakh	
	Balance of reserves after such withdrawal (F) =(D)- (E)	136 lakh	
	15% of its paid up share capital (G)	102 lakh	
	(F) more than (G)		

In the given question, since all the conditions are met, hence Long Boots Ltd. has validly declared dividend.

(b) According to section 6 of the Limited Liability Partnership Act, 2008,

(i) Every LLP shall have at least two partners.

(ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

In the given situation, the alone partner should consider the above provisions of the Limited Liability Partnership Act, 2008, governing the LLP being operated by a single partner.

As per section 64 of the Limited Liability Partnership Act, 2008, the circumstances in which LLP may be wound up by Tribunal are:

(a) if the LLP decides that LLP be wound up by the Tribunal;

(b) if, for a period of more than 6 months, the number of partners of the LLP is reduced below two;

(c) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;

(d) if the LLP has made a default in filling with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or

(e) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

(c) It is a basic rule of interpretation that if it is possible to avoid a conflict between two provisions on a proper construction thereof, then it is the duty of the court to so construe them that they are in harmony with each other. But where it is not possible to give effect to both the provisions harmoniously, collision may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other. A specific rule will override a general rule. This principle is usually expressed by the maxim, "*generalia specialibus non derogant*".

However, this rule can be adopted only when there is a real and not merely apparent conflict between provisions, where the words of a statute, on a reasonable construction thereof, admit of one meaning only then such natural meaning will prevail. The court shall not attempt an interpretation based on equity and harmonious construction.

Question 5

(a) Stallworth Ltd., a listed company having a paid up share capital of ₹ 11 crore with a turnover of ₹ 100 crore had appointed an Audit Committee which recommended M/s ANC & Associates, a firm of Chartered Accountants having such qualifications and experience as is required for appointment as the auditor of the company. The next Annual General Meeting (the AGM) was due on 30.09.2023. The Board disagreed with the said recommendation of the committee and refer back to it for reconsideration. The Audit Committee was adamant on appointing the above firm of the chartered accountants.

Discuss in the light of the Companies Act, 2013:

SUGGESTED ANSWER

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(i) *The course of action for Board of Directors to resolve the above deadlock. What would be your answer, if above situation was that of filling the casual vacancy of auditors?*

(ii) *The steps to be taken by the Board of Directors for appointment of auditors in case there was no requirement of Audit Committee in the company?* ***(5 Marks)***

(b) (i) *Explain the protection available for the "whistleblowers" in the context of the Limited Liability Partnership Act, 2008.* ***(3 Marks)***

(ii) *Describe the consequences of making a false statement in any return, statement or other document under section 37 of the Limited Liability Partnership Act, 2008.* ***(2 Marks)***

(c) *State the provisions of the General Clauses Act, 1897 relating to 'gender and number'.* ***(4 Marks)***

Answer

(a) According to section 177 of the Companies Act, 2013 read with the *Companies (Meetings of Board and its Powers) Rules, 2014*, in every listed public company- an Audit Committee shall be constituted by Board of directors.

Rule 6 of *Companies (Meetings of Board and its Powers) Rules, 2014*, provides that in case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the Annual General Meeting (AGM) for appointment.

If the Board disagrees with the recommendation of the Audit Committee- It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

(i) In the given question, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the AGM.

Section 139(8) provides that the Board may fill any casual vacancy in the office of an auditor within 30 days.

Section 139(11) prescribes that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Hence, the position will remain same even in case of casual vacancy.

(ii) In case there was no requirement of appointment of an audit committee then the BOD shall recommend to the members in the AGM, the name of an individual or a firm which can be appointed as auditor after considering qualifications and experience of such individual or firm and other matter as laid therein.

(b) (i) According to section 31 of the Limited Liability Partnership Act, 2008,

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or
- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

(2) No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

(ii) According to section 37 of the Limited Liability Partnership Act, 2008,

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement:

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to 5 lakh rupees but which shall not be less than 1 lakh rupees.

(c) Gender and number

According to section 13 of the General Clauses Act, 1897, in all legislations and regulations, unless there is anything repugnant in the subject or context:

(1) Words importing the masculine gender shall be taken to include females, and

(2) Words in singular shall include the plural and vice versa.

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun 'he' and its derivatives may be construed to refer to any person whether male or female. So, the words 'his father and mother' as they occur in section 125(1)(d) of the CrPC, 1973 have been construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply.

Question 6

(a) LKJ Ltd. is a company having paid up share capital of ₹ 12.50 crore with total number of members being 3500. The board of directors have called a general meeting (the meeting) to be conducted on 06.05.2023 at 2.00 pm. On the date of the meeting the required quorum was not present within half an hour and hence was adjourned to the next week on 13.05.2023 on

same day at same venue. In reference to the above scenario in light of the relevant provisions of the Companies Act, 2013 elucidate upon the following queries of the company.

(i) What will be the fate of the meeting in case two members, in person, were present at the adjourned meeting held on 13.05.2023?

(ii) In case, on 06.05.2023 a total of 16 members were present but the chairman owing to the unruly behaviour of some members during the meeting had adjourned the same to 13.05.2023 and at the adjourned meeting only 3 members, in person, are present. What will be the fate of such adjourned meeting?

(iii) In case, where such meeting was called by the requisitionists under section 100 of the Act and at such meeting the quorum was not present, what will be the fate of such meeting?

OR

(a) The Income Tax Authority (the statutory body) has gathered some information and is of the view that there has been a manipulation of accounts of FGH Ltd. reflecting an incorrect financial position of the company. The statutory body intends to get the accounts reopened to reflect correct financial position of the company. In light of the Companies Act, 2013 elucidate.

(i) the statutory provisions governing the issue of re-opening of accounts by the Income Tax Authority.

(ii) the voluntary revision of financial statements or board's report by the directors.

(iii) For how many preceding financial years the board of directors may revise the financial statements? ***(5 Marks)***

(b) (i) Who will sign the audit report in case of a proprietorship concern or the firm of the auditors and how the qualification/s in the audit report will be dealt with by the auditor at the annual general meeting of the company as per the provisions of the Companies Act, 2013?

(3 Marks)

(ii) Explain the provisions relating to expert's consent included in the prospectus to be issued in India by the companies incorporated outside India as per the provisions of the Companies Act, 2013. ***(2 Marks)***

(c) Explain the rules relating to the remittances made by persons other than individuals requiring approval of RBI as provided in Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 issued under the Foreign Exchange Management Act, 1999 in respect of the following:

(i) Commission to the agents abroad for sale of residential flats or commercial plots in India.

(ii) Remittances for consultancy services procured from outside India.

(iii) Remittances by way of reimbursement of pre-incorporation expenses.

(4 Marks)

Answer

(a) (i) According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

In the given question, the quorum for the given company having 3500 members shall be 15 members personally present.

Where quorum is not present in the adjourned meeting (i.e. 13.05.2023) also within half an hour, then the two members present shall form the quorum.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the quorum was present. However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these 3 members shall not constitute the quorum and hence, shall stand further adjourned.

(iii) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if called by requisitionists under section 100, shall stand cancelled.

OR

Answer

(a) (i) According to section 130 of the Companies Act, 2013, a company shall not:

a. re-open its books of account and

b. recast its financial statements,

unless an application in this regard is made by:

a. the Central Government,

b. the Income-tax authorities,

c. the Securities and Exchange Board of India (SEBI),

d. any other statutory regulatory body or authority or

e. any person concerned.

& an order is made by a court of competent jurisdiction or tribunal to the effect

a. That the relevant earlier accounts were prepared in a fraudulent manner; or

b. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year. However, where a direction has been issued by the Central Government under the proviso to section 128(5) for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

(ii) According to section 131 of the Companies Act, 2013, if it appears to the directors of a company that:

a. the financial statement of the company does not comply with the provisions of section 129; or

b. the report of the Board does not comply with the provisions of section 134.

They may prepare revised financial statement or board's report in respect of any of the three preceding financial years.

Such revised financial statement or report shall not be prepared or filed more than once in a financial year.

(iii) The board of directors may revise financial statements in respect of any of the three preceding financial years.

(b) (i) As per section 145 of the Companies Act, 2013,

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of section 141(2) (i.e. in case of firm including LLP is appointed as an auditor of a company, only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm).

The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(ii) According to section 388 of the Companies Act, 2013,

(i) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,-

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of section 33 (Issue of application forms for securities) and section 40 (Securities to be dealt with in stock exchanges), so far as applicable.

(ii) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(c) The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India as provided under FEMA, 1999 read with Schedule III of the FEM (Current Account Transactions) Rules, 2000:

(i) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.

(ii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Explanation—For the purposes of this sub-paragraph, the expression "infrastructure' shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.

(iii) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.